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Houses for the Poor: Continental European Prisons

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It would be an act of honesty to rename prison institutions as houses for the poor. The renaming would describe in a nutshell recent developments in penalty and incarceration in several European countries, in those where growing punitive harshness is found as well as those apparently displaying no visible growing punitiveness. A proviso, however, should be borne in mind: while the old houses for the poor, established during the course of the eighteenth century in England and Wales, hosted working paupers from whom many parishes expected to earn money, those 'housed' in European institutions today are officially regarded, and by many perceived, as largely unprofitable. One similarity, however, remains between the old and the new houses: they are both the result of philosophies regarding 'poor relief' as a distortion of market freedom. Malthus' complaint that the Poor Laws interfered with the natural laws of supply and demand finds echoes in contemporary advocates of austerity for the disadvantaged and prosperity for those already prospering.

This chapter provides sketches of the use of imprisonment in different continental European countries, identifying the groups which are mainly targeted by penal measures. These are followed by an analysis of the manifest and latent functions of punishment in the countries considered. The countries examined are divided on a pure geographical basis.

North

Scandinavian countries are usually held as examples of parsimony in the use of incarceration. However, in Finland, Norway and particularly in Sweden the number of prisoners rose significantly since the 1970s. The increase in Sweden was particularly significant around the turn of the new millennium, although fines still constitute the major penal sanction in the country (von Hofer and Tham, 2013). Rates of imprisonment in this area of Europe are associated with public concerns around violent crime, drug trafficking and illegal migration, but penal moderation and humane prison conditions remain characteristics of the region (Pratt and Erickson, 2012). Scandinavian 'exceptionalism' is said to emerge from the culture of equality prevalent in these countries which is embedded in their social fabrics through the universalism of the welfare state (Pratt, 2008). Beyond cultural explanations, however, moderate social inequality has also been indicated as a crucial factor making Scandinavian countries less inclined to adopt the increasing punitiveness characterizing late modern societies (Barry and Leonardsen, 2012). Successful rehabilitation programmes are singled out as key tools for reducing recidivism and hampering criminal careers. Academic and vocational programmes carried out in Swedish prisons, for example, are deemed successful, as are the provisions of the 1994 Prison Treatment Act, which established the need for prisoners to be offered a suitable

job. Such practices are seen as positive foundations for the offenders' new lives leading to successful re-integration back into society (Pettit and Kroth, 2011).

Finland is particularly significant for the long-term decline in prison numbers experienced after the 1990s, while Sweden and Norway show a 'slow creep' in incarceration rates particularly relating to foreign nationals (Lappi-Seppala, 2012; Dullum and Ugelvik, 2012; Scott, 2013). Critics, however, argue that low incarceration rates, like those observed in Scandinavian countries, do not say much about prison conditions, for example, they do not account for the high numbers of self-inflicted deaths which are relatively high in the institutions of these countries. Moreover, as Mathiesen (2012) has remarked, they do not illustrate the pain of detention as it is experienced by prisoners. In Sweden, finally, prison is increasingly becoming the quickest way of dealing with truly poor citizens, or even with non-citizens, namely migrants devoid of political power and representation. As von Hofer and Tham (2013: 52) observe: 'These often impoverished people have nothing of value to offer in the trade: neither in the form of economic or social capital, nor even in the sense of any meaningful form of electoral support. Thus, the criminal of today's Sweden has become a true public enemy'.

Research conducted in Scandinavian new generation prisons found that minimum security and open institutions induce their own specific pains of captivity. Inmates living in self-managed cottages and enjoying relative freedom of movement are reported to experience 'prisonization' symptoms similar to those characterizing inmates in closed institution: disorientation, anxiety, mental tiredness and fear (Shammas, 2014). Nordic penal regimes are also seen as Janus-faced, with one side relatively mild and benign and the other intrusive and oppressive. This duality is associated to the similarly dual nature of the welfare state, which simultaneously promotes individual well-being while authorizing disciplinary measures and even violations of basic rights. In Sweden, the welfare state is, on the one hand, universalistic and egalitarian and, on the other, exclusionary and essentialist. 'The lack of individual rights and an ethno-cultural conception of citizenship make certain categories of people such as criminal offenders, criminal aliens, drug offenders and perceived "others", particularly foreign nationals, vulnerable to deprivation and exclusion' (Barker, 2012: 5).

Sweden has been the subject of several reports by the council of Europe describing it as a harsher society than people think: 'Swedish law, society and morality can be surprisingly authoritarian' (Neroth, 2014: 1). Prison chaplain Birgitta Winberg, who is president of the International Prison Chaplains' Association, also thinks that 'the world has a rosy view of the country' (ibid). She described Swedish remand prisons as the worst in the world, with people kept in isolation before being charged, restricted in their cells for 23 hours a day. In a report published in December 2009, the Council of Europe (2009) wrote that despite an 'ongoing dialogue' about remand conditions, Sweden had done little since previous visits and concerns remained valid. The report said its delegates talked to remand prisoners and that the overwhelming majority had been given no explanation for the restrictions imposed on them. Many considered that the only reason why they were being prohibited contact with their family members was to 'break' them. The health of the accused was found to be severely strained. The report said that many prisoners suffered a lack of concentration, memory disturbance, impaired communication skills, as well as various physical

infirmities. Finally: 'Symptoms of anxiety disorder are commonly seen, post-traumatic stress disorder and depression can develop, and also agitation and self-harm' (ibid: 34).

Exceptionalism was tragically tested during the summer 2011, when seven people were killed by a bomb placed in the centre of Oslo and 69 at a youth camp run by the Labour Party. 'The offender was not an immigrant. He was a tall, blond man. He was a very Norwegian-minded Norwegian' (Christie, 2011: 1). In Nils Christie's comment, the initial reaction to the atrocity was not inspired by revenge but by an appeal to democratic principles guiding the Norwegian society. The Mayor of Oslo promised that the killer would be punished not through a suspension of democracy but an intensification of its ideals of tolerance. Some weeks after the massacre, at the municipal elections, the Mayor of Oslo was reelected with an extraordinary large margin. Changing the democratic rules would have meant accepting the killer's victory.

West

When 'contrasting tolerance' in the UK and the Netherlands, the positive aspects of the penal system in the latter country were, in the past, regularly highlighted. Downes (1988) observed better inmate-staff relationships, more lenient regimes, leaner complaint procedures available to prisoners, who also enjoyed the 'one person per cell' right. In the Netherlands, alternatives to custody were introduced in the early 1970s and included activities benefiting the public, which were to become more precise forms of community service by the turn of the decade. The probation service supervising the alternative treatment of offenders was strengthened, but was slowly removed from the social work arena into the sphere of the Ministry of Justice (van Swaaningen, 2000). Later, alternatives such as community service orders, educational schemes and electronic monitoring 'became integral parts of the penal system and were reshaped in accordance with the expansionist discourse' (Boone and van Swaaningen, 2013: 17).

Between the 1980s and the 1990s, the Netherlands experienced a decline in rehabilitation philosophies and a correspondent growth of the notion of punishment as a measure of social defense (van Swaaningen and de Jonge, 1995). How the new punitive philosophy came about is hard to ascertain, although justification for the shift revolves around two readily available variables: public pressure and rising criminality (Boone and Moerings, 2007). Imprisonment rates went down since 2005, and then up again after a few years, but fluctuations are explained through structural changes in law enforcement, inconstant sentencing policies and new rules for the classification of convicted offenders. The punitive shift has, however, accelerated: non-custodial sentences are no longer intended as lenient alternatives, but as effective forms of social protection, while public discourse on penal issues is increasingly informed by electoral aims. This has resulted in plans for the restructuring of sentencing, with proposals to introduce minimum penalties for every single offence and to exclude specific offenders from the benefits of non-custodial treatment. Campaigns on crime and insecurity tend to embrace any sort of antisocial behavior, particularly relating to street life, and are principally focused on immigrants. Public debate on crime control, in brief, is 'increasingly defined in

terms of “us” – the white Dutch – against “them” – the foreigners who make our society increasingly unpleasant’ (Boone and van Swaaningen, 2013: 11).

The Dutch rehabilitative stance, if attenuated, has not totally vanished, as proven by the persistence of programmes designed for prisoners returning to the free world and the prevalent use of non-custodial measures for those served with short sentences. Rehabilitation as a general principle, however, seems to be addressed to those who already show signs of social reintegration (white minor offenders), while it is ruled out for those who would genuinely benefit from it (excluded minorities). ‘The Dutch attitude, once interpreted as tolerance, has now turned into indifference towards those people who do not belong to us’ (ibid: 29).

The German criminal justice system was widely criticized during the 1970s for its severity in dealing with political dissent and the actual (and perceived) threat of armed struggle. The special legislation introduced in those years included longer remand periods and solitary confinement for those charged with political violence. It also entailed a widening of power for the police who could cordon off and raid entire urban areas and hold suspects for days without pressing charges (Messner and Ruggiero, 1995). By the late 1980s, however, the country managed to reduce the overall size of the prison population, as well as improve conditions in custody. During the course of the 1990s the pendulum swung back again, with the prison population rising, fuelled by public anxiety in the aftermath of unification, but also by the perceived threats of immigration and drug related crime. It should be noted that the rise took place in the remand population rather than in the prison population as a whole, signaling an attempt by authorities to reassure the public by inflicting some sort of preventive punishment. Fear of crime, therefore was associated with foreigners, young people and drug users, their visibility and poverty being perceived as precursors of illegal behavior.

In the new millennium processes of differential criminalization became more pronounced. Offences reported to the police and police investigations increasingly fell in the domain of illegal conduct typically imputed to marginalized groups. Non-German nationals are over-represented in the prison population (25 per cent), serve comparatively longer sentences and are given fewer non-custodial alternatives.

Fines replace prison sentences of up to three months, and their decline is due to the deterioration of economic conditions and failure to pay. Community service is, therefore, more frequently applied to disadvantaged offenders. Probation is available, as is the suspension of a sentence after two thirds of the period has been served, and electronic monitoring was introduced in 2011. ‘In brief, probation and conditional sentences make up the bulk of penal measures, while imprisonment, though remaining a crucial form of punishment, is decreasing’ (Dollinger and Kretschmann, 2013: 143). Despite regional differences, there is no empirical evidence of a general trend towards growing punitiveness in Germany. Punitive tendencies mainly affect particularly stigmatized offenders or particularly vulnerable groups. These are differentially treated throughout the criminal justice process, from public reporting to police investigation, during the judicial phase and, ultimately, at the sentencing stage. The core target of the criminal justice apparatus as a whole is, therefore ‘a small group of serious criminals who are seen as highly dangerous and at high risk of

recidivism' (ibid: 150), on the one hand, and traditionally marginalized groups who are deemed incapable to conform, on the other.

The French penal system is said to oscillate between a secular, 'scientific' model born with the Enlightenment and a religious, confessional model aimed at the redemption of offenders (Perrot, 1980; Gallo, 1995). Only during the 1960s did an 'obsession' with prison security develop, resulting in the identification of a new category of prisoners deemed particularly difficult. The regime imposed on these prisoners 'provided the blueprint for what were eventually to become high security prison institutions' (Gallo, 1995: 74). The definition of dangerousness was applied to professional criminals or those prisoners who challenged the prison regime. Differential treatment followed, whereby inmates were classified on the grounds of their attitude towards the institution. The second half of the 1970s was characterized by a period of reform, with more alternatives to custody being introduced and wider supervisory powers given to the judiciary on issues such as prison treatment and rehabilitation. Many crime prevention projects carried out at the local level in the first half of the 1980s (de Liège, 1991) led to a marked decline in the prison population, while the second half of the same decade saw the most ambitious programme to fight crime: the building of new prisons and the expansion of their total capacity.

Over the last three decades or so, the use of imprisonment as a penal measure has remained relatively stable, constituting approximately twenty per cent of all sentences. While fines tend to decline, community service orders observe an ascending trend. Although relative to the use of other sanctions, recourse to prison sentences has hardly increased, 'it has increased significantly in terms of the absolute number of people imprisoned' (Robert, 2013: 112). This, accompanied by an increase in the length of sentences handed down and new legislation restricting judicial discretion by mandating minimum sentences for recidivists, led to chronic prison overcrowding. During the first decade of the millennium, successive electoral campaigns were fought in the name of security and played to xenophobic and punitive sentiments, producing a very large number of new criminal laws.

The major shift in the composition of prisoners in France regards the percentage of non-French born: well over thirty per cent. The shift, which started in the early 1990s is due less to the prevalence of conventional offenders among non-nationals than to the stricter regulations introduced in the country with respect to work permits and permits to stay. Non-nationals, therefore, are 'administrative' offenders, *sans-papiers* who keep negotiating and fighting for their presence in France (Ruggiero, 2001). Increased powers accorded to law enforcement agencies to carry out identity checks and changes in legislation encouraging the targeting of people with foreign physiognomy were important determinants of the growing incarceration of non-nationals.

East

The prison system in Bulgaria is formed of old correctional facilities, most of which were built during the 1930s. The newest institution was constructed in 1962 and only in 2010 did the government identify an area around Sofia where a new facility with a 2,000 capacity is expected to be built. Bulgarian institutions detain between 8-9,000 prisoners, and the available space per person measures

around four square metres. Amnesties are used as a tool to temper over-crowding, although opposition by public opinion has significantly reduced their frequency and effectiveness over the last years. The imprisonment rate grew significantly at the turn of the current millennium, when a serious economic crisis hit the country, but accession to the EU required legal renewal and new procedural norms, which resulted in a reduction of custodial sanctions and their average duration (Gounev, 2013). Pressure on the country to fight organized crime and corruption, in its turn, caused the reversal of the trend, with custodial measures ascending again and harsher punishments being meted out.

Crime prevention policies and programmes for the re-integration of first-time offenders are insufficient and their impact unknown. Probation is used since 2005 as the main alternative to custody, and community service, which is loosely regulated, is also applied by the probation service, staffed mainly by former police officers, of whom less than ten per cent have undergone any professional training. One additional penal sanction available in Bulgaria consists of confiscation of criminal assets.

The prison system is characterized by corruption and a variety of criminal activities, ranging from the smuggling of prohibited objects to mendacious reports about the conduct of prisoners drafted by bribed professionals. The banned objects smuggled in include smart phones which allow offenders to carry out their illicit activities while serving a sentence, while reports relating to good conduct are used to gain regular days of release (Gounev and Bezlov, 2012). Drug use in prison is widespread.

Research shows a high degree of impunity for organized criminals and corrupt officials due to procedural loopholes and, conversely, exorbitant harshness inflicted upon socially excluded groups (CSD, 2012). 'The treatment of Roma people in the criminal justice system is the most troubling aspect of penal policies and the prison system. Roma are over-represented both in statistics about prosecution and within the prison population' (Gounev, 2013: 219).

Poland started its attempts at penal reform during the course of the 1990s, alongside other East European countries (King, 1996). Before, as Platek (2013) puts it, it was difficult to distinguish where prison ended, as most people, wherever they happened to be, felt as if they were behind bars. Reform introduced in 1997 stipulated that custody be used as a last resort. However, 'accustomed to harsh, long punishments, we have trouble changing our perspective' (ibid: 185). In other words, prison in Poland is regarded as 'the' punishment, and despite the possibility of applying fines or probation, imprisonment remains the core provision. Suspended sentences, on the other hand, prove ineffective because they are not accompanied by rehabilitative programmes in the community.

There is a high percentage (25 per cent) of remand prisoners in Polish institutions, a fact regarded by the European Court of Human Rights as a national structural problem. Prisons are over-crowded, detaining twice the number of inmates they should legally hold, and educational or rehabilitative activities can hardly have an impact in such conditions. While in the past inmates worked and made a contribution to state finances, after the transition work was replaced by 'programmes', supposedly aimed at helping prisoners reintegrate into society. Work in houses for the elderly or with children with special needs, work in agriculture and industry are all available on paper. Moreover, programmes for

the rehabilitation of alcoholics, drug abusers and sex offenders are also in place. But 'very few are able to benefit from this rich offer' (ibid: 190).

Around 5,000 people are imprisoned in Poland for drunken driving, most of whom are repeat offenders. Between 5-7,000 are sentenced to custody for possession of prohibited substances. Prisoners are young and poorly educated, devoid of realistic prospects for employment, and around half have committed property crimes: 'they are the unwanted labour surplus in today's market economy' (ibid: 194). Prisoners serving a sentence for violent offences are about ten per cent, very few for domestic violence, which is perceived as a family issue. About 2,500 inmates are serving a prison sentence for not paying alimony to their divorcees, while foreigners and ethnic minorities only constitute 2 per cent of the prison population. 'This is not because of Polish tolerance, it is rather because there are not many foreigners in Poland' (ibid: 194). While 80,000 are incarcerated, over 30,000 of those sentenced to custody are not behind bars because they await a place to become vacant before serving their sentence.

The Russian Federation spent the last decade and a half discussing and probing penal reform measures, but political difficulties made their implementation patchy and problematic (MacAuley and Macdonald, 2007). In 2010, when the remaining pieces of the Gulag system were dismantled, proposals for change aimed at the abolition of labour colonies, the ranking of penal institutions in terms of security and the creation of a single-cell system (Piacentini, 2013). Surveillance technology was seen as paramount, along with the introduction of non-custodial measures, the development of a probation service and, in general, a new emphasis on rehabilitation. Aggregate figures show a decline in the total prison population since 2001, particularly for juveniles, and a marked increase of women in custody. On paper, alternatives offer day release, open institutions and programmes involving local communities, although external entities engaged in such programmes are mainly religious groups (Pallot and Piacentini, 2012). Custody, in brief, remains the core of the penal system in the Russian Federation, while post-custodial measures are being developed, including anger-management programmes and projects revolving around cognitive behavioral therapy. With some key figures in the Prison Service publicly supporting Europe-style changes, 'the hoped-for end to the Gulag might just be happening, albeit slowly' (Piacentini, 2013: 170).

Violent crime increased significantly during the last decade, particularly racist aggression, leading to condemnation by human rights organisations. According to the UN, lack of integration and cohesion in the Russian society creates growing marginalization and poverty, with migrants becoming scapegoats. While corruption in the country is rife, affecting all layers of society, and powerful forms of organized and white-collar crime mesh within the institutional apparatus (Rawlinson, 2012), the prison population is mainly composed by young marginalized offenders. Reacting with outrage to criticism from abroad, Russia remains faithful to its past, namely mass incarceration: 'Russia will continue to face urgent questions on how prisons have yet again become tangled in a complex and authoritarian political web' (Piacentini, 2013: 179).

South

The prison system in Italy is fostered by a succession of emergencies associated with specific groups of offenders. Such groups are the target of ad hoc pieces of legislation or judicial and executive policies, and demand for their punishment becomes high at particular historical moments (Ruggiero, 1995). In Italy, armed robbers, violent political opponents, drug traffickers, organized crime members and migrants have acted as successive emergencies. Prison trends are reflected in this succession of social and institutional alarms alimented by real or imaginary panics, with amnesties used as responses to periodical overcrowding. By the late 1990s the justice system experienced a definitive bifurcation, becoming tolerant with the rich and powerful, and powerful and harsh with the poor. Migrants and drug users became the chosen victims of law and order campaigns, while the variable 'safety' determined who won the elections. Albanians, North Africans, Roma, Romanians, squeegee merchants, the homeless and drug users filled the prisons quickly: 'This changed the Italian penal law to the point that it was no longer facts and offences, but lifestyles and life stories, which were penalized' (Gonnella, 2013: 231). Migrants were harshly targeted simply for being illegally present on the Italian territory.

Italian penal institutions are characterized by four distinctive traits. First, the number of non-nationals held in custody (25-30%); second, the number of remand prisoners (almost 40%); third, the number of inmates sentenced for drug-related offences (35%); fourth, the rate of overcrowding (for each 100 prison places officially available, there are 148 prisoners). A look at the social composition of those processed through the penal system reveals a high degree of selectivity. Custody, for remand or sentenced prisoners, mainly targets the socially and economically disadvantaged. Rules around recidivism, on the other hand, create a situation whereby the same individuals keep entering and exiting the prison system. Another indicator of selectivity is provided by the level of education of those incarcerated: only one per cent hold a university degree, while the number of illiterate prisoners is four times higher, and the large majority have only completed primary school.

Alternatives to custody are available and can be applied at any moment of the criminal justice process (Palma, 1997). Some completely divert offenders from the prison system, while others apply to offenders who are already serving a sentence. Amnesties, reform on paper, and emergencies suspending reform, aptly describe the vagaries of the penal system in Italy (Gonnella and Marietti, 2010). The general climate prevailing in the country affects the number of individuals punished and the nature of the punishment inflicted. 'This, however, does not seem to affect the corrupt elite ruling the country, whose criminality reproduces itself irrespective of the general climate oscillating between harshness and leniency' (Gonnella, 2013: 243).

In Spain, after the death of Francisco Franco in 1975, the need and urgency to reform the penal system was intensely felt, but the process of change was met with hard opposition expressed by those social, economic and military forces that fought for a return to the past (Aranda Ocaña and Rivera Beiras, 2013). The Spanish Constitution was promulgated in 1978 and a set of principles was established guiding the criminal justice and the penal systems. These affirmed the need for sentencing proportionality, the abolition of capital punishment and torture and the rehabilitative purpose of custody. Despite the new openings, harsh punitive measures remained in place as a result of growing public alarm

addressed to specific groups of offenders, making the reform process uncertain and contradictory. For instance, the old Penal Code, which stood in opposition to the new constitutional principles, was only repealed in 1995. This was also the year when the a new Penal Code was ratified, introducing community work as an alternative to custody and probation for prisoners willing to undertake cultural, educational and work activities. At the same time, however, more severe treatment was addressed to offenders deemed particularly dangerous and the maximum sentence was extended to thirty years.

A culture of emergency spread in the penal system leading to what is termed the counter-reform of 2003. This brought the level of the maximum penalty to 40 years imprisonment, curtailed alternatives to custody for certain categories of offenders, extended remand periods, and ruled the deportation of non-national offenders. This punitive drift gathered momentum when crime rates were falling, and mainly addressed property and drug offenders. Non-nationals in Spanish institutions are around 30% of the total prison population, and conditions for all are such that inmates are unable to benefit from any educational or rehabilitative programme. Institutions are crammed and cells are shared. The European Court of Human Rights regularly denounces this situation, equating it to inhuman and degrading treatment. Health conditions are dismal, with diseases spreading due to a lack of professional care. What is more disturbing is that harshness in the treatment of offenders goes hand in hand with the economic crisis causing harsher social problems.

Greek penal policies seem to be informed by improvisation and inconsistency (Karydis and Koulouris, 2013). This is what emerges when two key reports submitted to the parliament, respectively in 1994 and 2011, are examined. The 1994 report (adopted four years later) stressed the ineffectiveness of imprisonment as a correctional tool, remarked the arbitrariness of the criminal justice system as a whole, and questioned its rehabilitative function. Prison regimes were said to violate elementary human rights and social forms of prevention were encouraged. Critics, however, felt that the report failed to 'consider the structural economic and social inequalities that make prisons continue to detain those whom penal institutions have always confined, namely the poor and dispossessed' (ibid: 266).

The 2011 report provided a list of problems afflicting the Greek prison system, highlighting: over-crowding, the presence of non-national inmates, the prevalence of drug offenders, and widespread corruption within the institutions. The report encouraged the consideration of imprisonment as a last resort and the respect of prisoners' rights and dignity, while work and education were indicated as the key rehabilitative tools. The development of alternatives to custody, including community service, home detention and electronic monitoring, were also proposed. In a contradictory fashion, however, while a process of decarceration was apparently advocated in the report, the number of new facilities whose construction was planned exceeded the number of old institutions to be dismantled.

Greece occupies the middle of the punitive ladder among European countries, although the prison population has quadrupled over the last thirty years (Cheliotis and Xenakis, 2011). Harsher sentences are the key factor for this, particularly with regard to drug offences, while remand prisoners form almost a third of the total prison population. Irregular migrants 'awaiting deportation

after serving a sentence constitute an additional burden for the prison administration' (Karydis and Koulouris, 2013: 274). This is a relatively recent development, bringing the current proportion of non-nationals in Greek prisons to around fifty per cent of the total prison population. While the economic crisis and the subsequent austerity measures are poised to cause more unemployment, poverty and exclusion, the international climate encourages both authoritarian and liberal penal policies. In this way, zero tolerance, mass incarceration and degrading conditions in custody coexist with efforts to develop and improve alternatives to custody and humane conditions in prison. 'Penal policies in Greece reflect this contradictory international climate, favoring more use of imprisonment and further restrictions on inmates' fundamental rights – while claiming the exact opposite' (ibid: 283).

Cultures of punishment

The sketches presented above seem to corroborate the initial statement that prisons in Europe should be renamed as houses for the poor. In what follows an attempt is made to identify the philosophies inspiring these 'houses' and their latent functions.

In the countries considered there are some uniform modalities in the treatment of migrants, non-nationals, ethnic minorities, young and marginalized people. The harsher punishments inflicted on these groups reveal a process of penal differentiation which has been occurring for decades in most developed countries. Similar uniformity, however, is found in the lack of penal responses against crimes committed by relatively powerful individuals and groups. Such commonalities need some qualifications.

It has become by now a common practice to punish individuals who belong to specific groups because of an actuarial calculus indicating them as more likely to offend and re-offend. What is penalised, in most circumstances, is not their actual illegitimate conduct, but their social condition that is deemed conducive to crime. In contexts in which the labour market offers scarce opportunities to migrants and excluded people in general, penalties may be heavier due to the low expectations relating to their current and future participation in the productive process. In such cases, it is their 'indolence' and lack of participation in consumers' markets that are punished, inactivity being perceived as a pre-requisite for the adoption of unpredictable conducts, and punishment being deemed an appropriate measure for the exclusion of people from an already crowded labour market. This preventative punishment, in brief, is not aimed at preventing crime, but law-abiding behaviour which would come with work. We can assume, by contrast, that in countries where peripheral areas of employment are still available, punishment, whether more lenient or otherwise, will take on an 'educational' function, training the punished to accept peripheral, badly paid jobs (Ruggiero, 2010; 2013).

Trust is a key variable adopted by Mathiesen (2013) to explicate variations in punishment and its intensity. Trusting one's social system means believing that everybody can find a place in it, even those who happen to flout its norms and challenge its values. Punishment, therefore, signals lack of confidence in social arrangements and, conversely, excessive confidence in authorities inflicting it. This excessive confidence in the elite takes the form of leniency for powerful

offenders, who paradoxically continue to be trusted even when committing crimes. Trust, however, is also dependent on media power, moral enterprise and anxiety brooding, all elements which end up drawing league tables of dangerousness, designating untrustworthy groups and individuals. In most counties examined above, anxiety associated with economic, political and 'spiritual' difficulties is translated into fear of the other, and the other, whether actually dangerous or not, is subjected to differentiated penal treatment.

This socio-cultural dynamic is questioned by authors who argue that 'changing patterns of punishment lie not in *social* processes but in *state and legal* processes' (Garland, 2013: 484). The immediate causes of expanding prison populations and increased punitive measures, in this view, are to be found in specific forms of state action. In brief, legal enactments are deemed crucial for variations in penal outcomes. The leniency shown in the past by the Dutch penal system, for example, can be seen as the result of specific acts performed by state agents and of the professional ideology inspiring them (Downes, 1988). Prosecutors and judges held negative views about imprisonment: 'an orientation shaped by their law school education, by their ongoing connections to criminological experts, and by the historical memory of internment under the Nazis' (Garland, 2013: 493). The question remains, however, what type of society the acts performed by state agents are expected to preserve or what type of social characteristics they aim to reproduce. Inequality, in this respect, is a key characteristic of social systems that can be included in the analysis of penal practices. Let us see how.

State acts performed in societies displaying a large degree of inequality have to be particularly energetic if that degree of inequality has to be maintained (Piketty, 2014; Rosanvallon, 2014). If penal measures are tools for the perpetuation of the status quo, in other words, more inequality must be turned into harsher penalty. This entails an ideological process whereby growing inequality is met with passive consent or even with inoffensive anger 'about so much wealth going to so few' (Starr, 2014: 33). Penalty, in such cases, aims at making widening economic disparities acceptable and, at the same time, reshaping the very idea of social justice, so that success is highly rewarded and failure heavily penalized. Penalty, in brief, has to prevent the dispossessed from thinking of their situation in a collective way, while averting the type of 'reformism of fear' generated by dissent, when governments realize that change is necessary in order to avoid unmanageable conflict. Penal variations, in this sense, are determined less by different socio-economic arrangements (Cavadino and Dignan, 2006) than by degrees of inequality.

A related issue pertains to the costs of punishment in situations of budgetary pressure (Lacey, 2008; McBride, 2013). The financial crash, for instance, may be seen as a lesson teaching us about the costs of unregulated excess, and simultaneously may offer an opportunity to think anew about excessive punishment. Penal moderation might therefore be advocated as a supplement to financial moderation and reform (Loader, 2010). Reform campaigners basing their arguments on the necessity to reduce penal expenditure appear to neglect that the elite to which they address their demands embrace a system of waste, where wealth is squandered, dilapidated and the elite itself is prone to destroy what it creates. This practice, as Bataille (1967) would remark, is a characteristic of ruling groups disingenuously displaying a lack of interest in

their riches while reproducing the conditions to acquire growing quantities of them. 'Waste' is a good investment if it sustains a penal system that defends privileges, and cannot be measured with the conventional rational calculus applied in common mathematical operations. The 'costs' of penal systems, as argued above, have to be measured through the degree of income differences they are supposed to maintain or exacerbate.

A final thought should be given to the function of punishment when the targets, as in the countries examined, are mainly marginalized, excluded groups. The process of incarceration, with its arbitrariness and differential punitiveness, reproduces the illegal choice presumably embraced by prisoners, thus creating an intelligible cultural continuity between the realm of crime and that of punishment. Prisons, in brief, perpetuate the cognitive structure of offenders prior to imprisonment, who are then more likely to re-offend after being released (Hockey, 2012). Moreover, penal action against vulnerable groups does not generate integration or social stability, let alone produce law-abiding citizens. Mass incarceration of the poor causes yet more marginalisation, exclusion, community disorganization, it produces criminogenic effects (De Giorgi, 2013), destabilizing and tearing apart the very social fabric that it purports to mend.

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